

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

April 26, 2016

The Rhode Island Ethics Commission held its 5th meeting of 2016 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, April 26, 2016, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair Timothy Murphy

John D. Lynch, Jr., Vice Chair* James V. Murray***

M. Therese Antone Marisa A. Quinn

Mark B. Heffner**

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Education Coordinator/Staff Attorney; Staff Attorneys Teresa Giusti and Amy C. Stewart; and Commission Investigators Peter J. Mancini and Gary V. Petrarca.

At 9:02 a.m., the Chair opened the meeting. The first order of

business was:

Advisory Opinions.

The advisory opinions were based on draft advisory opinions prepared by Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of:

Stephen S. Neuman, the Chief of Staff to the Governor of the State of Rhode Island, requesting an advisory opinion concerning how to manage and avoid potential conflicts of interest related to pending legislation regarding daily fantasy sports games, and potential regulation of such games, given that his spouse is employed by DraftKings and her compensation includes an equity interest in the company.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Claire Richards, Esq., Executive Counsel to the Office of the Governor, appeared on the Petitioner's behalf.

***Commissioner Lynch arrived at 9:09 a.m.**

In response to Commissioner Heffner, Attorney Richards stated that

the Petitioner would normally be heavily involved in discussing agency budgets. She further stated that, in the future, there might be a budget line item relative to funding for DFS games regulation. She explained that, given that such legislation has yet to be enacted, any potential budgetary conflicts are speculation, but if such a situation arose the Petitioner would seek further advice from the Ethics Commission. Upon motion made by Commissioner Murray and duly seconded by Commissioner Antone, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Stephen S. Neuman, the Chief of Staff to the Governor of the State of Rhode Island.

The next advisory opinion was that of:

Daniel M. Gendron, a member of the Woonsocket City Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the City Council's consideration of a Payment in Lieu of Taxes Agreement for Mount Saint Charles Academy, a private Catholic junior-senior high school attended by the Petitioner's daughter.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Antone, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Daniel M. Gendron, a member of the Woonsocket City Council.

The next advisory opinion was that of:

Nina Pande, a member of the Providence School Board, requesting an advisory opinion from the Ethics Commission authorizing an exception to the Municipal Official Revolving Door provision of the Code of Ethics so that she may apply for employment with the City of Providence as the Mayor's Director of Policy.

Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that while she respected the Staff's recommendation, she disagreed with its conclusion. She further stated that in 2011 the General Assembly enacted legislation that limited the authority of the Providence School Board and tried to distinguish appointed school committees from elected school committees.

****Commissioner Heffner arrived at 9:26 a.m.**

Chair Cheit commented that there appears to be a presumption that if the proposed conduct violates Commission Regulation 36-14-5014's ("Regulation 5014") revolving door prohibition, then there is automatically an appearance of impropriety relative to the proposed

conduct. Staff Attorney Gramitt stated that the Providence School Board is not purely advisory and is authorized to, among other things, independently develop a budget, approve vendor contracts and hire a superintendent. He also recalled that during the rulemaking hearings for Regulation 5014, a Commissioner noted that not all school committee members are elected. He stated that the Commission then decided to specifically include school committee members, whether elected or appointed, in the scope of the revolving door prohibition.

Commissioner Murphy stated that he was sympathetic to the Petitioner's position because she seemed to be qualified for this position. Chair Cheit stated that the Commission's refusal to grant an exception is not about the Petitioner's qualifications but, rather, the fact that the circumstances set forth in the advisory opinion fall squarely within the scope of Regulation 5014's revolving door prohibition. He further stated that Regulation 5014 was designed to mirror the state official revolving door prohibitions and, perhaps, the same restrictions at the municipal level may be too strict. However, he noted that whether Regulation 5014 should be amended is a policy question for another day. Upon motion made by Commissioner Quinn and duly seconded by Commissioner Lynch, it was

VOTED: To issue an advisory opinion, attached hereto, to Nina Pande, a member of the Providence School Board.

AYES: John D. Lynch, Jr.; M. Therese Antone; James V. Murray; Marisa A. Quinn; Mark B. Heffner; Ross Cheit.

NOES: Timothy Murphy.

The next advisory opinion was that of:

Leslie MacDougall, an Environmental Health Food Specialist for the Rhode Island Department of Health (“DOH”), Office of Food Protection, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from working, on her own time and in her private capacity, as a food safety consultant for food establishments in Connecticut and/or Massachusetts.

Staff Attorney Giusti presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Heffner, the Petitioner stated that her position at DOH occasionally requires her to work late in order to complete an inspection of a particular premises. She stated that she only intends to conduct private work once or twice a month, likely on the weekends. She further stated that most of the premises she inspects for DOH are independently owned, but she represented that she would not accept private work for restaurants outside of Rhode Island if such work was offered to her by the owner of restaurant for whom she conducted a DOH inspection. Commissioner Heffner suggested making that representation more explicit in the advisory opinion.

Chair Cheit agreed and directed Staff Attorney Giusti to amend the draft to include that the Petitioner will not accept private work for out-of-state clients who own restaurants within her assigned inspection region in Rhode Island. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to Leslie MacDougall, an Environmental Health Food Specialist for the Rhode Island Department of Health.

The final advisory opinion was that of:

John Shehan, a former member of the Newport Historic District Commission (“HDC”), requesting an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics’ prohibition on representing clients before his former board within one year of his resignation.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Commissioner Heffner stated that there was no evidence of urgency here given that the design plans would be ready for submission to the HDC only one month prior to the expiration of the one-year waiting period. In response to Commissioner Murphy, Staff Attorney Stewart replied that the Petitioner requested the advisory opinion in order to be

transparent regarding his work on this project. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Antone, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to John Shehan, a former member of the Newport Historic District Commission.

The next order of business was:

Approval of minutes of the Open Session held on March 22, 2016.

Upon motion made by Commissioner Murphy and duly seconded by Commissioner Murray, it was

VOTED: To approve minutes of the Open Session held on March 22, 2016.

AYES: Mark B. Heffner; James V. Murray; Timothy Murphy; Marisa A. Quinn; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.; M. Therese Antone.

The next order of business was:

Director's Report.

Executive Director Willever reported that there were four (4) complaints and two (2) advisory opinions pending, and one (1) ongoing preliminary investigation. He stated that eight (8) APRA requests were received since the last meeting, seven (7) of which were granted within one business day, and one (1) of which was denied because it contained investigative material.

The next order of business was:

Commission discussion and potential vote re: a Petition filed by Johanna Harris to initiate rulemaking proceedings concerning enforcement of subsection (5) of R.I. Gen. Laws § 36-14-16(a)

Legal Counsel Alves stated that he reviewed this Petition, which invoked both Rhode Island General Laws § 42-35-6 (the Administrative Procedures Act section regarding a “Petition for the adoption of rule”) and Commission Regulation 1026 (entitled, “Petition for Adoption of Regulations”). He stated that the Petition does not propose language for rulemaking but, rather, addresses issues of investigations, and interpretation and enforcement of existing laws. He advised the Commission to vote to either deny the Petition with an explanation or to initiate rulemaking. Chair Cheit offered Ms. Harris an opportunity to speak regarding the language of

a regulation that she would like the Commission to adopt. Ms. Harris stated that her Petition related to her belief that the Commission staff was misinterpreting § 36-14-16(a)(5). Chair Cheit replied that the staff's interpretation of an existing statute is not relevant to a request to initiate rulemaking. Ms. Harris replied that she had no further comment.

Discussion ensued. Commissioner Quinn noted that the Petition was not about the content of a particular law but, rather, how that law is enforced. Commissioner Lynch stated that he did not see the lack of a financial disclosure requirement for all mayoral appointees as a significant issue and could not recall it being raised during his seven years on the Commission. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Quinn, it was unanimously

VOTED: To deny the Petition for rulemaking because it involved the interpretation of an existing law rather than the adoption of new or amended regulations.

The next order of business was:

Legislative Update: A discussion of the Commission's legislative agenda and priorities for 2016, and a review, discussion and possible vote as to the Commission's position on pending and anticipated legislation including: Senate Resolution 2016 – S2427; Senate

Resolution 2016 – S2060 and House Resolution 2016 – H7577.

First, Staff Attorney Gramitt provided the Commission with copies of Senate Resolution S2901, which he identified after the agenda was posted. He stated that S2901 relates to the Ethics Commission's jurisdiction but its purpose is unclear.

Next, Staff Attorney Gramitt summarized the bills listed on the agenda: S2427, S2060 and H7577. Discussion ensued. Commissioner Heffner considered whether Staff Attorney Gramitt, upon signing in to give testimony before the House or Senate Judiciary Committees, should take a position for or against any of these bills. Discussion ensued. A consensus was reached and the Commission instructed Staff Attorney Gramitt to attend hearings regarding these bills, sign in as neutral, convey the Commission's consistent position regarding its jurisdiction, and answer any questions.

*****Commissioner Murray left the meeting at 10:27 a.m. and did not return. Prior to leaving the meeting, he filed a recusal statement for the matter In re: Donald J. Lally, Jr., Complaint No. 2015-7.**

The next order of business was:

Executive Session.

At 10:27 a.m., upon motion made by Commissioner Quinn and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To go into Executive Session, to wit:

1. Motion to approve minutes of Executive Session held on March 22, 2016, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

2. In re: Donald J. Lally, Jr., Complaint No. 2015-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

3. Preliminary Investigation No. 2016-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 10:44 a.m. Upon motion made by Commissioner Quinn and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To seal the minutes of the Executive Session held on April 26, 2016.

The next order of business was:

Report on Actions Taken in Executive Session.

Chair Cheit reported that the Commission took the following actions

in Executive Session:

1. Voted to approve the minutes of the Executive Session held on March 22, 2016.

[Reporter's note – the vote was as follows:

AYES: Timothy Murphy; Marisa A. Quinn; Mark B. Heffner; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.; M. Therese Antone.]

2. Unanimously voted (6-0) to grant a Motion to Enlarge Time, Second Extension, in the matter of In re: Donald J. Lally, Jr., Complaint No. 2015-7.

3. Received a report on the results of Preliminary Investigation No. 2016-1, and noted that the investigation has been closed.

The next order of business was:

New Business

There being none, at 10:46 a.m., upon motion made by Commissioner Quinn and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

Robert A. Salk
Secretary